

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE**

**Call to Order:** By **CHAIRMAN DICK HAINES**, on February 2, 2001 at 8:30 A.M., in Room 317-C Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Dick Haines, Chairman (R)  
Sen. William Crismore, Vice Chairman (R)  
Rep. Christine Kaufmann (D)  
Sen. Linda Nelson (D)  
Sen. Bill Tash (R)  
Rep. Joe Tropila (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Gary Hamel, Legislative Branch  
Amber Sauer, Committee Secretary  
Doug Schmitz, OBPP

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: Department of Environmental  
Quality, Permitting and  
Compliance Division  
Executive Action: Department of Environmental  
Quality; Remediation Division,  
Permitting and Compliance  
Division

*{Tape : 1; Side : A; Approx. Time Counter : 0}*

#### **EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

#### **REMEDIATION DIVISION (continued)**

**Ms. Sandi Olsen, Administrator, Remediation Division, DEQ,** explained the Orphan Share Account which comes from the Ground Water Assessment Account and the Oil and Gas Tax as shown on page C-131 of the LFD Book. She also distributed information for the committee.

**EXHIBIT(jnh27a01)** and **EXHIBIT(jnh27a02)**

**Ms. Olsen** reported to the committee as directed the previous day as to which decision packages could be one-time-only. This was in response to the concern of the committee that although there are no general funds, if all DP's were approved, the base would increase by \$5.5 million.

**EXHIBIT(jnh27a03)**

She covered the table and summarized the situation. DP-66 involved 47 parties who owe for clean-up costs. Twelve of them are not paying; therefore, they will proceed with legal action to get that payment underway. The outgoing expenses are reimbursed back to the DEQ Protection Fund. She stated a total of \$4.6 million could be designated one-time-only.

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**Mr. Gary Hamel, LFD,** began with the Remediation Division decision packages (DP's). He referred to information distributed for the committee on the agencies he works with as to the anticipated biennial savings.

**EXHIBIT(jnh27a04)** and **EXHIBIT(jnh27a05)**

DP-9 Base Adjustment is for miscellaneous items such as contracted services, supplies, travel, and training to be funded from state and federal special revenue sources. **Mr. Schmitz** stated there were mandatory vacancy savings imposed by the last session. **Ms. Olsen** stated the prolonged vacancies were due to the reorganization of the Petroleum Tanks Release Compensation Board staff and in the development of the Compliance Inspection Program for the underground storage tank program. Ten positions were left vacant until job descriptions could be re-written to use the positions to their best advantage. After re-writing the positions, recruitment took from eleven to twenty months. There is only one position left to be filled at this time. There was further discussion about the type of positions available, training necessary, and if applicants are available. **CHAIRMAN HAINES** asked for a list of those positions.

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**Motion/Vote:** SEN. CRISMORE moved that DP-9 BASE ADJUSTMENT FOR A TOTAL OF \$225,000 ONE-TIME-ONLY BE ADOPTED. Motion carried unanimously.

Mr. Hamel moved on to DP-30 IT Positions to CSD Remediation Division which is a request to transfer 2.0 FTE from the remediation program to the central management program. He had no issues with the DP.

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**Motion/Vote:** SEN. CRISMORE moved that DP-30 IT POSITIONS TO CSD REMEDIATION DIVISION BE ADOPTED. Motion carried unanimously.

DP-49 is the Leaking Underground Storage Tank Trust Fund request to establish 1.0 FTE through an operational category change for the leaking underground storage tank (LUST) trust. Ms. Olsen stated the modified FTE was inherited with the belief it would be temporary but it is necessary to have it permanent and full-time. CHAIRMAN HAINES asked what is seen for the long-term in this position. Ms. Olsen stated the program would begin to experience a decline within the next ten years. SEN. NELSON asked if after the controversial beginnings of the program, the program is going more smoothly. Ms. Olsen replied it is and distributed a graph depicting confirmed, active, and resolved petroleum releases. She explained that a release is contamination from leakage from underground storage tanks which can cause problems with groundwater. There was discussion about releases and spills and the regulations of each.

**EXHIBIT** (jnh27a06)

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Mr. Chisholm added the above ground tanks are not regulated by the DEQ but by the fire marshal for flammable standards. When there is a spill, cleanup costs become eligible for reimbursement by the underground storage tanks program. There is a DP being presented by the Petro Board to get a figure of the numbers of above ground tanks in the state and their condition. REP. TROPILA asked if refining companies such as the one in Great Falls are eligible for those funds if they have a leak. Ms. Olsen stated they are as long as they are compliant. She explained further the requirements of being compliant. By January 1, 2002, all tanks are to have been inspected. There are five counties with county inspectors and approximately 25 private inspectors. In

explaining the exhibit, **Ms. Olsen** stated there were 87 releases in 2000, 20 above ground, and 9 post 1989 upgrades.

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**Ms. Olsen** stated they are still finding historic leaks in closing various tanks but that should decrease as all tanks become inspected. Of the 87 releases, 50 were from spill overfills.

**Mr. Chisholm** stated there are three major controversial issues remaining: 1) the announcement in 1989 by the EPA that all underground fuel tanks had to meet new requirements by a specific deadline of January 1, 1999; 2) the inspections that will identify violations of the underground storage tank law; and 3) the violator not in compliance is not eligible for reimbursement of cleanup costs until compliance is met. Licensed operators are compliant and the cleanup of the old underground tanks that are leaking is going forward.

**{Tape : 1; Side : B; Approx. Time Counter : 45}**

**Motion/Vote:** SEN. CRISMORE moved that **DP-49 LEAKING UNDERGROUND STORAGE TANK TRUST FUND BE ADOPTED. Motion carried unanimously.**

**Mr. Hamel** continued with DP-53 Cleanup Sites/Lockwood Solvent which is a request for an aggregate FTE position to be used in the Lockwood Solvent site and the Libby Asbestos project on an as needed basis for cleanup activities. **Mr. Schmitz** questioned if it was a biennial appropriation or two different amounts for the 2002 and 2003 years. **Ms. Olsen** stated the department's intent is that it be a biennial appropriation. There was further discussion about the FTE, the qualifications necessary for the position, the role of the DEQ in the Libby Asbestos Project, and the time span expected for the position. **REP. KAUFMANN** questioned the amount of \$1,000,000 for one FTE. **Ms. Olsen** stated the funds are for contract services, analyzing and preparing proposals in addition to an FTE, and there may be more than one person in the position. There are eleven sites in the State on the National Priority List with Lockwood being very high in priority. **Ms. Danzer, Administrator, Centralized Services Division, DEQ,** explained an aggregate FTE as one that allows more than one person in a position.

**{Tape : 1; Side : B; Approx. Time Counter : 255}**

**Motion/Vote:** SEN. CRISMORE moved that **DP-53 CLEANUP SITES/LOCKWOOD SOLVENT BIENNIAL APPROPRIATION BE ADOPTED. Motion carried unanimously.**

**Mr. Hamel** discussed DP-65 CECRA Staff which is funds for 2.0 FTE to address non-national priority list Comprehensive Environmental Cleanup and Responsibility Act (CECRA, Montana Superfund) sites. If approved, the program would conduct investigations to plan and prioritize future work at these sites and many costs would be recovered. **Ms. Olsen** referred to exhibit 1 for a map of the State Superfund Sites. There are approximately 60 high and maximum priority sites with 8 of those unassigned to people. The funding comes from the Environmental Quality Protection Fund (EQPF). **CHAIRMAN HAINES** asked how the list of superfund sites is generated. **Ms. Olsen** stated the DEQ determines the list based on historic recording of sites and Department investigations to verify contamination. There is statute to determine the listing and de-listing of sites. **Mr. Chisholm** added the funding comes from the Resource Indemnity Trust Interest through two other funding accounts. He gave an example of a CECRA site in the Missoula area. **Ms. Olsen** added several other examples of cities asking for grants to cleanup industrial polluted areas.

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**Motion/Vote:** REP. TROPILA moved that DP-65 CECRA STAFF BE ADOPTED. Motion carried unanimously.

**Mr. Hamel** presented DP-66 Contracted Services for Legal Support which is a request for a restricted, one-time-only, biennial appropriation for contracted legal support for addressing cleanup and recovering costs at CECRA sites. He had a concern about the declining EQPF funds which is explained on C-89 of the LFD budget book.

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**Motion/Vote:** SEN. CRISMORE moved that DP-66 CONTRACTED SERVICES FOR LEGAL SUPPORT ONE-TIME-ONLY, RESTRICTED, AND BIENNIAL BE ADOPTED. Motion carried unanimously.

**Mr. Hamel** discussed DP-70 Petroleum Release Corrective Action Plan which is a proposal of state special revenue for a petroleum release correct action plan. The 2.0 FTE would be required to manage a backlog of leaking underground storage tank sites. **Ms. Olsen** stated current staff are handling over 100 sites per person. She clarified this is not any duplication of previous requests as it is a different program with different funding sources that address some of the same problems but at different types of sites. They are to be located in Billings and Kalispell to reduce travel costs and provide a better distribution of sites to case managers.

**{Tape : 2; Side : A; Approx. Time Counter : 50}**

**Motion/Vote:** REP. TROPILA moved that DP-70 PETROLEUM RELEASE CORRECTIVE ACTION PLAN BE ADOPTED. Motion carried unanimously.

Mr. Hamel discussed DP-75 Replacement PC's and Printers, a request to purchase replacement personal computers and printers in order to maintain a four-year replacement schedule as required. Ms. Danzer explained further that in filling vacancies, several old computers were recycled and now need replacing. There was concern from the committee about the total amount of dollars the State of Montana is spending in computers and upgrades and replacements. SEN. NELSON stated the standing Information Technology Committee is considering whether or not a Special Information Technology Committee may be needed to address those questions and have that information available.

**Motion:** SEN. CRISMORE moved that DP-75 REPLACE PC'S AND PRINTERS BE ADOPTED.

**Discussion:** REP. TROPILA asked about the cycle of replacing computers every four years. Ms. Danzer explained the high use computers are replaced every four-years with those being "bumped down" to lower users until the ones being replaced are much older than four years and usually not able to run current software programs. She added SABHRS (the State system) is contributing to the replacement cycle.

**{Tape : 2; Side : A; Approx. Time Counter : 125}**

**Motion/Vote:** SEN. CRISMORE moved that DP-REPLACE PC'S AND PRINTERS BE ADOPTED. Motion carried unanimously.

Mr. Hamel presented DP-79 LUST Trust Truck Replacement-a request to replace a truck used in the leaking underground storage tank trust program. The current truck has 160,000 miles on it and is needed to respond to emergency situations such as explosions or toxic vapors in buildings. He recommended a one-time-only designation.

**{Tape : 2; Side : A; Approx. Time Counter : 155}**

**Motion:** REP. TROPILA moved that DP-79 LUST TRUST TRUCK REPLACEMENT ONE-TIME-ONLY BE ADOPTED.

**Discussion:** Mr. Schmitz stated it is being purchased rather than leased through the motor pool due to the fact that they need a

standard transmission. **Mr. Chisholm** added the truck goes off road many times to get to some of the mine sites and the standard transmission is necessary. There was discussion regarding the standard transmission being necessary.

**{Tape : 2; Side : A; Approx. Time Counter : 235}**

**Motion/Vote:** REP. TROPILA moved that DP-79 LUST TRUST TRUCK REPLACEMENT ONE-TIME-ONLY BE ADOPTED. Motion carried unanimously.

**Mr. Hamel** discussed DP-99 Orphan Share Reimbursements which are costs that can be attributed to defunct or bankrupt liable persons. Reimbursements from state funds can only occur after site cleanup is complete. He suggested the committee might want to make it a one-time-only appropriation so it may be reviewed next session. **Ms. Olsen** stated they are state superfund sites and one-time-only would not be a problem. She stated the two sites this is specific for are the Corbin Flats and the Darby Lumber S & W Sawmill facility. This is a request for spending authority for the first time from the Orphan's Share Account since it was established in the 1997 session. The projects have no owners to be identified for responsibility of cleanup. The special RIT Trust fund money created by interest is there for this use.

**{Tape : 2; Side : A; Approx. Time Counter : 370}**

**Motion/Vote:** SEN. NELSON moved that DP-99 ORPHANS SHARE REIMBURSEMENTS ONE-TIME-ONLY AND RESTRICTED BE ADOPTED. Motion carried unanimously.

**{Tape : 2; Side : A; Approx. Time Counter : 390}**

**Motion:** REP. TROPILA moved that THE COMMITTEE BE TAKEN TO CORBIN FLATS AND TO FISH, WILDLIFE, AND PARKS ANIMAL SHELTER TO ENABLE THE COMMITTEE TO MAKE INFORMED DECISIONS BE ADOPTED.

**Discussion:** There was discussion by the committee and the agency regarding dates available, etc. The agency would work with Fish, Wildlife and Parks to put the tour together as the two sites were within driving distance of Helena and each other.

### **New Proposals**

**Mr. Hamel** continued with the new proposals and DP-9 NRIS Core Funding for the Remediation Division. This is the Division's share of the Montana State Library Natural Resource Information

System (NRIS) based on a three-year average of usage. **CHAIRMAN HAINES** gave the committee a history of pro-rating funding for the NRIS system.

**Motion/Vote:** SEN. CRISMORE moved that DP-9 NRIS CORE FUNDING REMEDIATION DIVISION BE ADOPTED. Motion carried unanimously.

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**Mr. Hamel** discussed DP-15 Above Ground Storage Tank Survey which is a request for a statewide survey of aboveground petroleum storage tanks. The survey would be used to determine the number of aboveground storage tanks and assess the public health and environmental concerns. **Ms. Olsen** stated there are two statutes that address tanks--the underground storage tanks and aboveground tanks with underground piping. However, the Petroleum Tank Release Compensation Fund provides for remediation of all types of tanks.

**Mr. Chisholm** reminded the committee this study had been referred to earlier as a method for the DEQ to determine the number of aboveground tanks in the State. This is a one-time-only request. There was discussion about the underground and aboveground tanks, why some of each, and the problems of each. **SEN. NELSON** felt this is the beginning of another major program for the State. She questioned if it was necessary at this time. **Mr. Chisholm** stated this was requested by the Petroleum Tank Release Board as the fire marshals need numbers. The Department does not intend to regulate aboveground tanks. It was decided DP-16 Petroleum Board Fund Liabilities Study could be combined with this executive action as they complement each other. **Mr. Chisholm** explained DP-16 and the difference between DP-15 and DP-16.

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**Motion/Vote:** REP. TROPILA moved that DP-15 ABOVE GROUND STORAGE TANK SURVEY AND DP-16 PETROLEUM BOARD FUND LIABILITIES STUDY ONE-TIME-ONLY AND RESTRICTED WITH A REPORT ON THE STATUS OF THE OUTSTANDING LIABILITY TO THE NEXT LEGISLATIVE SESSION BE ADOPTED. Motion carried 5-1 with Nelson voting no.

**Mr. Hamel** presented DP-42 Restricted Database Development which is a request for each year of the biennium for information systems maintenance, development and conversion activities. The Department is requesting information technology functions be centralized and this could be part of that centralization. **Ms. Olsen** stated the intent is that the program activities compliment



what is happening at the department level with centralization.

**Ms. Danzer** explained this action could not be done at Centralized Services since it was determined certain information technology needed to remain in each division for daily use. The two staffs may work together.

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**Motion/Vote:** SEN. CRISMORE moved that DP-42 RESTRICTED DATABASE DEVELOPMENT ONE-TIME-ONLY AND RESTRICTED BE ADOPTED. Motion carried unanimously.

**Mr. Hamel** discussed DP-50 LUST Trust Contracted Service Increase to Base which is a request to spend LUST grant carryover funds within the next two years as mandated by the EPA. These funds will augment current efforts to investigate and cleanup LUST sites that are orphaned or where a responsible party is unable to do the work. It could be a one-time-only.

*{Tape : 2; Side : B; Approx. Time Counter : 342}*

**Motion/Vote:** SEN. NELSON moved that DP-50 LUST TRUST CONTRACTED SERVICE INCREASE TO BASE ONE-TIME-ONLY AND RESTRICTED BE ADOPTED. Motion carried unanimously.

**Mr. Hamel** stated the language recommendations have been stated in the motions in dealing with the decision packages and would not need to be moved.

That completed the Remediation Division with the exception of requested information by the committee to be supplied the next day. **REP. KAUFMANN** asked if the rising costs of energy had been considered in any of the DEQ's decision packages. **Ms. Jan Sensibaugh, Director, DEQ,** stated increased energy costs were not considered in the budgets for the base work.

*{Tape : 2; Side : B; Approx. Time Counter : 425}*

#### PERMITTING AND COMPLIANCE DIVISION

**Ms. Judy Hanson, Acting Administrator, Permitting and Compliance Division, DEQ,** gave an overview of the agency.

#### **EXHIBIT** (jnh27a07)

She covered the organizational chart which has five bureaus with an additional office for the oversight and support to the Montana

Environmental Policy Act. The five bureaus are the Air and Waste Management Bureau; Community Services Bureau; Environmental Management Bureau; Industrial and Energy Minerals Bureau; and the Water Protection Bureau. **Ms. Hanson** stated the Division administers all of the DEO's permitting and compliance activities and related federal authorities with the exception of the groundwater tank issues. The Bureaus implement delegated federal programs with funding being a mixture of general fund, state special revenue and federal grants. She covered each of the Bureaus and the responsibilities of each per exhibit 7 starting with the Air and Waste Management Bureau.

***{Tape : 3; Side : A; Approx. Time Counter : 0}***

**Ms. Hanson** continued with the other Bureaus and the duties of each. She presented a chart of the budget requests with and without bond forfeitures and charts of funding for each Bureau. She covered the Division goals and objectives some of which are to conduct effective permit programs, ensure that facilities are properly sited, conduct environmental analysis of all applications, provide training and technical assistance, and obtain and maintain authorization for all program components.

**Ms. Hanson** highlighted the major accomplishments of the Division. One of the major projects for the division administration and various division staff resulted from the bankruptcy of the Pegasus Gold Mining Corporation. The exhibit had tables for each bureau of the numbers of permits and activities during the year for such items as permit modifications, environmental assessments, annual report reviews, new licenses, exploration inspections, and public hearings.

***{Tape : 3; Side : A; Approx. Time Counter : 290}***

**REP. KAUFMANN** asked about the state's role in subdivision laws.

**Ms. Sensibaugh** replied the counties do the review and send the approval or denial to the DEQ who makes the ultimate decision to approve or deny the recommendation. **CHAIRMAN HAINES** asked for information on the subdivision laws.

***{Tape : 3; Side : A; Approx. Time Counter : 350}***

**Mr. Hamel** began with the base adjustment for the DEQ. He pointed out that in fiscal 2002 the base will grow over \$25,000,000 with \$21,000,000 in bond forfeitures. He will refer to the information on base adjustments regularly.

**EXHIBIT** (jnh27a08)

**CHAIRMAN HAINES** explained to the agency the committee was making every effort to decrease general expenditures and they may have to re-work some of the decision packages. He also asked them to identify one-time-only and restricted expenditures so that it will not expand the base too much. **Ms. Hanson** explained the Division allocated base adjustments to each program and distributed a table of those by fund type.

**EXHIBIT (jnh27a09)**

She stated the majority of the requests are for spending authority for the amount of the bonds they know will come from the Pegasus bankruptcy bond money for reclamation of the sites. They expect to spend \$21,000,000 on those sites. **Mr. Chisholm** stated those expenditures could be one-time-only and restricted with no problem. This Division has a very small amount of general fund expenditures.

*{Tape : 3; Side : B; Approx. Time Counter : 0}*

**Mr. Hamel** began with DP-10 which is MEPA Base Adjustments for indirect charges for the Montana Environmental Protection Act personnel expenditures. It is general fund monies. **Ms. Hanson** stated the FTE are the first line of information for the public and very important to the Division.

*{Tape : 3; Side : B; Approx. Time Counter : 40}*

**Motion/Vote:** SEN. CRISMORE moved that DP-10 MEPA BASE ADJUSTMENTS BE ADOPTED. Motion carried unanimously.

**Mr. Hamel** continued with DP-11 Hazardous Waste Base Adjustment which requests no general fund. It is for hazardous waste base adjustments which include laboratory testing, travel, field and sampling equipment, etc. **Ms. Hanson** explained it is to reinstate the base due to vacancies. This is the program that received final authorization from EPA and will be the lead agency to implement corrective action.

*{Tape : 3; Side : B; Approx. Time Counter : 72}*

**Motion/Vote:** SEN. CRISMORE moved that DP-11 HAZARDOUS WASTE BASE ADJUSTMENTS BE ADOPTED. Motion carried unanimously.

**Mr. Hamel** explained DP-12 Asbestos Base Adjustments with no general fund being requested. The request is for increases for travel and indirect charges. **Ms. Hanson** added the staff responsible for licensing and regulating permits on construction

facilities have spent a large amount of time responding to the telephone inquiries and therefore are asking for increased travel to get to the sites. **Ms. Sensibaugh** stated when the Libby situation hit the press, the calls came mainly from the Libby area but are now spread throughout the state. **Mr. Hamel** added he had received information from the asbestos area regarding telephone calls from 1996 through fiscal 2000. The calls jumped from an average of approximately 1300-1400 per year to 3250. **Ms. Sensibaugh** commented the base adjustment was necessary as the staff spent their time in the office on the phones rather than in the field on site inspections.

***{Tape : 3; Side : B; Approx. Time Counter : 150}***

**Motion/Vote: SEN. NELSON** moved that **DP-12 ASBESTOS BASE ADJUSTMENTS BE ADOPTED. Motion carried unanimously.**

DP-13 is Air Base Adjustments which is requesting a net reduction for air base adjustments for travel, supplies, and other miscellaneous costs and reductions in expenditures associated with the smoke management program. **Ms. Hanson** stated it is a combination of increases in miscellaneous expenses but a reduction in contract services which nets in a total reduction.

***{Tape : 3; Side : B; Approx. Time Counter : 180}***

**Motion/Vote: SEN. CRISMORE** moved that **DP-13 AIR BASE ADJUSTMENTS BE ADOPTED. Motion carried unanimously.**

**CHAIRMAN HAINES** adjourned the meeting to continue with the Permitting and Compliance Division executive action on Monday, February 5, 2001.

**ADJOURNMENT**

Adjournment: 11:45 A.M.

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REP. DICK HAINES, Chairman

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SANDRA WHITAKER, Transcription  
Secretary

DH/SW

**EXHIBIT** (jnh27aad)